

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.02.2020

CORAM

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.22 of 2018

Rajkumar

... Appellant/Petitioner

vs

Karunaprabha

.. Respondent/Respondent

Civil Miscellaneous Second Appeal filed under Section 13(1) (ia) of the Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree passed in HMCMA. No.13 of 2017 on the file of the Principal District Judge, Vellore, dated 05.07.2018, confirming the order and Decreetal order made in HMOP. No.3 of 2016, dated 26.07.2017 on the file of the Sub-Ordinate Court, Gudiyatham.

For Appellant : Mr.Baskar for C. Kasirajan

For Respondent : Mr.T.Sreelekha

For Mr.D.Rajagopal

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed by the appellant/husband against the judgment and decree passed in HMCMA. No.13 of 2017, on the file of the Principal District Judge, Vellore, dated 05.07.2018, confirming the order and Decreetal order made in HMOP. No.3 of 2016, dated 26.07.2017 on the file of the Sub-Ordinate Court, Gudiyatham.

2. The appellant is the husband and the respondent is his wife. The appellant had filed a petition before the Subordinate Judge, Gudiyatham, under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 against the respondent/wife for divorce and the same was taken on file in in H.M.O.P.No.3 of 2014.

3. It is an admitted fact that the marriage between the appellant and the respondent was solemnized on 14.11.2011 at Babu Mahal Palace Marriage Hall, R.S.Road, Gudiyatham, Vellore District according to the Hindu religious rites and customs.

4. The case of the appellant is that the marriage between the appellant and the respondent was an arranged one. After the marriage, both of them were living in the appellant's house at Triplicane as joint family. Initially, the couple were living happily for a month and thereafter, the respondent started to pick up quarrel with the appellant even for unimportant issues. Further the respondent had wrongly thought that the appellant had an illegal intimacy with his elder brother's wife. Due to which, she used to quarrel with her husband. Therefore, the appellant had offered to set up a separate matrimonial home. But the respondent did not agree to the said demand and she wanted to leave from the matrimonial home. The elders of the appellant's family informed the attitude of the respondent to her parents. But, the parents, without considering the same, have abused the appellant in filthy language and took away their daughter from the matrimonial home on 25.02.2012 itself. The appellant had tried his best to join with his wife by trying to convince through the relatives of the respondent in Periyakulam, Dindigul District and the same was also ended in failure due to irresponsible behavior of the respondent and her parents.

5. On 03.10.2012, a female child was born to the respondent. But, the same was not informed to the appellant and his family members. The appellant had tried to contact the respondent through phone. However, he could not contact her since February 2012. Therefore, the appellant was constrained to send a legal notice to the respondent on 26.06.2014 calling upon her for reunion with the appellant. The said notice was received by the respondent and she has sent a reply on 03.07.2014 through her counsel stating that she is ready to join with her husband, if he is willing and setting up a separate matrimonial home. Accordingly, the appellant has taken a flat for lease and informed the same to her counsel and relatives. But she did not come forward to live with the appellant. All the attempts made by the appellant for reunion with the respondent have ended in vain. The respondent has deserted the appellant without any valid reason for almost 2 ½ years. Due to her indifferent attitude, the appellant suffered mental agony. Hence, the appellant filed the above petition in HMOP. No.3 of 2017 before the learned Sub Judge, Gudiyatham seeking divorce on the ground of desertion.

6. Before the trial Court, during trial, in order to prove the case, the appellant has examined as many as three witnesses viz., P.W.1 to P.W.3 and marked as many as eight documents viz., Ex.P1 to Ex.P8. On the side of the respondent, she examined herself as witness viz., D.W.1 and no documents was marked. After hearing the oral and documentary evidence, the learned Sub Judge, Gudiyatham dismissed the petition filed by the appellant seeking for divorce.

7. Challenging the said judgment dated 26.07.2017, the appellant/husband has filed an appeal before the learned Principal District and Sessions Judge, Vellore and the same was taken on file in HMCMA. No.13 of 2017. After perusal of the entire materials, the learned Principal District and Sessions Judge, Vellore has also dismissed the appeal filed by the appellant/husband on the ground that there is no sufficient reason for granting divorce.

8. Aggrieved by the said judgment of the learned Principal District and Sessions Judge, Vellore dated 05.07.2018 in HMCMA. No.13 of 2017, the appellant/husband has come before this Court by way of this Civil Miscellaneous Second Appeal.

9. The learned counsel for the appellant would submit that the appellant and his family members have not harassed the respondent and the respondent only quarreled with the appellant and his family member regarding petty issues and she only left the matrimonial home, on her own, without any valid reason and demanded for a separate house. Further the respondent had deserted the appellant for more than two years without any valid ground. In spite of several mediation made by the appellant, the respondent has not joined with him. The respondent has filed a maintenance case and she has also filed a case in DVC. No.2 of 2016 before the learned Judicial Magistrate, Gudiyatham for demanding dowry against the appellant and his family members. But, the appellant and his family members had never demanded any dowry. Only to threaten the appellant, the respondent had filed the above two suits. As a dutiful husband, the appellant has set up a separate matrimonial home to re-join with his wife. However, she never came for reunion with her husband and further she did not inform that a female child was born to her. Both the Courts below have failed to consider all these aspects, dismissed the case, which warrants interference of this Court.

10. In support of his contention, the learned counsel has placed reliance on the judgments of the Hon'ble Apex Court in the matter of (i) Samar Ghosh Vs. Jaya Ghosh, Appeal (Civil) No.151 of 2004; and (ii) Naveen Kohli Vs. Neelu Kohli, Appeal (Civil) No.812 of 2004.

The learned counsel for the respondent/wife would submit that she had denied all the allegations set out in the petition filed by the appellant herein and the respondent has filed a counter stating that at the time of marriage, the respondent's parents gifted 45 sovereigns to the respondent and 5 sovereigns to the appellant and household articles including silver vessels and spent a sum of Rs.3,00,000/- for marriage expenses. After the marriage, the respondent was living in the matrimonial house

with the appellant. Subsequent to the marriage, the respondent came to know that the appellant had an illegal intimacy with his elder brother's wife. When the respondent asked about the same to the appellant, he accepted the relationship with his elder brother's wife and told that "if you want to live with me, accept the relationship between us and stay here otherwise, go to your parental house". The respondent had conveyed the same to her mother in law and father in law. But, on the contrary, instead of correcting their son kept quiet and they never advised the appellant. Therefore, the respondent had compelled the parents of the appellant to set up a separate house for her and the appellant. For which, the appellant and his elder brother and his brother's wife had joined together, harassed the respondent to do all the household works and they did not give food regularly to the respondent and the respondent suffered mentally as well as physically in their hands. The appellant was not having any affection towards the respondent from the date of marriage. In the year 2012 of February, the respondent got pregnant. When the same was informed to the appellant, he compelled the respondent to abort the foetus. But, the respondent refused to do so. Hence, the appellant had abused the respondent in filthy language every day, which hurt her mind.

12. Immediately, the respondent informed the attitude of the appellant to her parents. Subsequently, the parents and relatives of the respondent had come to the appellant's house and asked about the issues to the elders. But, the appellant and his family members have quarreled with them and sent out the respondent from the matrimonial home on 25.02.2012 with her parents. On 03.10.2012, a female child was born to the respondent at CMC. Hospital at Vellore. The same was informed to the appellant and his family members. But they never visited to see the child.

13. On 26.06.2014, the appellant had sent a legal notice to the respondent to re-join with her. On 03.07.2014, the respondent had sent a reply that the respondent is ready to live with the appellant after arranging a separate matrimonial house. But the appellant had never come to take the respondent and his child. The respondent and her child were living at Gudiyatham in her parental house. The child is aged about eight years now. The respondent is struggling to live along with her child and she is depending upon her parents for day-to-day expenses. The appellant is working in a MNC. Company and earning a sum of Rs.70,000/- per month as salary. Despite having sufficient means, the appellant has neglected to maintain his wife and child. Therefore, the respondent has filed a maintenance case in M.C.No.22 of 2015 before the learned Judicial Magistrate, Gudiyatham. Thereafter, the appellant has filed a petition for divorce and the same was dismissed by the trial Court and the

lower Appellate Court. Now the appellant has come before this Court by way of this appeal. The respondent is always ready to join with the appellant. Hence, she prays to dismiss this petition.

14. I have heard Mr.Baskar, learned counsel for the appellant and Mrs. T.Sreelekha, learned counsel for the respondent and also perused the entire materials available on record.

15. It is seen that due to some misunderstanding, the basic problem arose between the parties. According to the appellant/husband, the respondent has quarreled with the appellant and his family members for petty issues. The respondent left the matrimonial home without any valid reason. After the delivery, the respondent did not inform to the appellant. The appellant sent a legal notice to the respondent to rejoin with her. But she never come back. Hence he filed a divorce case.

16. In the petition, in paragraph Nos.10 and 11, the appellant averred as under:

'10. The petitioner states that all the attempts made by him to contact the respondent indeed in vain as the respondent did not even pick up the phone calls made by the petitioner. The petitioner could not contact the respondent since 2012, when she left the matrimonial home. Therefore, the petitioner was constrained to send legal notice dated 26.06.2014 to the respondent calling upon her to join back in matrimonial home. The said notice was received by her and she has sent reply dated 03.07.2014 through her counsel by stating that she is ready to come back on petitioner setting up separate matrimonial home. Accordingly, the petitioner has taken a flat for lease and informed the same to her counsel through rejoinder dated 21.07.2014. The petitioner also simultaneously contacted her relatives and tried to persuade the respondent to join back in matrimonial home. However, all his attempts to join back the respondent ended in vain.

11. The petitioner submits that the above said acts of the respondent is nothing but a mental cruelty in which no prudent man is expected to live. Further, the respondent has deserted the petitioner without any reason for almost about 2 ½ years thereby denied all conjugal comforts to the petitioner. Therefore, the marriage between the

petitioner and the respondent has irretrievably broken down.''

17. Per contra, the case of the respondent is that the appellant had an illegal intimacy with his elder brother's wife and he never shown any kindness towards her during the matrimonial life and he never used to give any respect either to the respondent and her family. The appellant and his family members have sent out the respondent from the matrimonial home and he has not taken any steps for re-union with his wife. According to the respondent, the appellant is not having any affection towards the respondent. It is the specific case of the respondent that she is always ready to live with the appellant, but the appellant is not interested to join back with her.

18. The point that arises for consideration is whether the Courts below were right in dismissed the case or not. The grievance of the appellant seeking divorce against the respondent is that she left the matrimonial home without any valid reason and deserted the appellant and she is not cooperating with him on each and every trivial issues and has caused mental agony, which constitutes mental cruelty to the appellant.

19. The cruelty suffered by the appellant, for seeking divorce from the respondent, as could be seen from the petition averments, is that the respondent is not willing to join back with the appellant. From the narration of averments set out in the petition filed by the appellant, it is seen that the respondent left the matrimonial home without any reason. However, the respondent is willing to live with the appellant.

20. It is settled that mere trivial irritations, quarrels, normal wear and tear of married life which happens in day-today life in all families would not be enough for grant of divorce on the ground of cruelty and desertion. Only sustained unjustified and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty.

21. In the present case, based on the oral testimony of the appellant that when the appellant called the respondent by way of re-joinder, the respondent has not come forward to live with the appellant, cannot be said to be an issue to cause mental or physical cruelty to the appellant.

22. On the other hand, the respondent submitted that she is always ready and willing to live with the appellant. According to the respondent, the appellant has not taken any steps to rejoin with her and his child. There may not be any proof to prove such an allegation by the respondent. However, the plea of

the respondent also cannot be brushed aside. No particulars have been given by the appellant and only vague and general allegations have been made by him. These, in my view, are not sufficient to prove that the respondent deserted him and treated him with cruelty. Therefore, this Court is of the view that no fault could be attributed on the respondent/wife.

23. The allegations that the respondent/wife was spreading rumors about the appellant/husband's character and due to which, there was a mental agony, was not proved by letting in any evidence. When there is no specific evidence stating that these acts created and caused mental agony, cruelty against the person, the divorce cannot be granted on that ground. The mere small trivial issues arising between the husband and wife regarding their expectations for future life, cannot be termed as a 'cruelty' caused by the wife.

24. Parties to the marriage, tying nuptial knot, are supposed to bring about the union of two souls. It creates a new relationship of love, affection, care and concern between the husband and wife and that it brings two families together. Such ties cannot be allowed to be severed on the grounds which are ordinary wear and tear of matrimonial life.

25. As rightly argued by the learned counsel for the respondent, there will be some problem in everybody's family and such a issue cannot be treated as cruelty to anyone of the spouses to file petition for divorce. According to the respondent, she is willing to continue the life with the appellant, but the appellant was refusing to take back the respondent and his child. Even during this extended period of separation, none of the parties have taken steps for reunion or restitution of conjugal rights. Insofar as the plea raised by the respondent / wife regarding visitation of the child, there is no petition filed by the husband seeking for visitation rights or guardianship. In view of the same, there is no proof to show that he had really had an intention to reunite with his wife and child.

26. In this regard, it is the submission of the appellant that the lower Appellate Court observed that even the wife deserted him, he would very well take care of the child, clearly shows that the act of desertion by the respondent, but the first Appellate Court erred in considering the said fact and passed judgment in favour of the respondent.

27. The first Appellant Court has rightly observed that the appellant has not stated any specific averments to prove that he was subjected to cruelty by the respondent. The appellant has also not proved that the respondent voluntarily deserted him.

The respondent has admitted that she is always ready and willing to live with the appellant. So, there are no sufficient ground for divorce. The appellant has not proved the cruel activities of the respondent. The lower Appellate Court rightly observed the evidence and judgment of the trial Court, dismissed the appeal on 05.07.2018 in H.M.C.M.A.No.13 of 2017. Aggrieved by the said judgment, the appellant has preferred the present appeal.

28. The appellant has not taken any steps to bring back the respondent and his child to the matrimonial home on his own risk and it is unfair on his part. Mere filing the re-joinder is not sufficient and it would clearly establish that he is not interested in living with the respondent. In fact, the first appellate Court, rightly observed the fact and dismissed the petition. It shows that the appellant is not willing to take the respondent and his child to lead the matrimonial life earnestly. The husband was showing no love to his wife but always taking care of his brothers family but never thought that he is also having a wife and child to take care, neglecting their interest. Even though he had stated he has taken a flat for staying separately not taken earnest steps to take them there for living. Thus, the plea of the appellant that the act of the respondent caused mental cruelty is totally unsustainable and only for the purpose of maintaining petition for divorce, the appellant has taken the said ground and having found the real intention of the appellant, Both the Courts below rightly dismissed the petition for divorce filed by the appellant/husband.

29. It is to be noted that child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment, which is conducive to his social and physical health is assured to him/her. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also gets the limit to the future development of the society. Children are the greatest gift to humanity. Mankind has the best hold of itself. The main duty of the parents is to take care and protect the interest of the child.

30. However, the points needs to be considered in this matter is spouses are living separately for a sufficient length of time. In her evidence the respondent stated that she is willing to live with the appellant, but the appellant is not willing to live with the respondent. As per the pleadings, the spouses are living separately from the year 2012 onwards. It is also clear that the appellant and the respondent have fought for all small trivial issues and they have not thought about the small child born to them, who will lose the affection of the

both parents and only if parents are living together, children will live happily and if they are separated, the mental trauma undergone by the child cannot be measured by words. As the welfare of the children are the paramount point to be considered, it is not too late for the parents to atleast take care of the child's future life and join together and live for the child.

31. Regarding the judgment cited there was in extraordinary facts and circumstances, the court was of the view that it records for bringing an amendment in the Hindu Marriage Act, 1955 to incorporate 'irretrievable breakdown of marriage' as a ground for granting divorce. Hence, in this case, no such grounds are available.

32. It is pertinent to mention here that when the husband/appellant wants to take care of his parents, his brother and family, he ought to have shown some interest to wife also. That apart, even though the appellant / husband has committed cruelty by not taking back his wife, he has not mended his ways by inviting the respondent to come and live with him. The appellant had sent a legal notice by only stating that he has taken a house for rent.

33. Moreover, even before this Court at the time of hearing the present appeal, the appellant / husband was so adamant and he did not want to take care of the child and not even paid any money to the child, as maintenance every month. Hence the appellant / husband, who wanted to get away from the wife cannot be left to do so, as he has got a daughter, who is to be taken care by him. Also, marrying a person and then, chasing her out cannot be taken 'for granted' by a husband and he is duty bound to take care of wife and child, hence this Court is not inclined to grant divorce to the appellant / husband.

34. For all the above stated reasons, the present Civil Miscellaneous Second Appeal is dismissed and the Judgment and Decree passed by the learned Principal District Judge, Vellore, dated 05.07.2018 in HMCMA. No.13 of 2017 is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District Judge, Vellore.

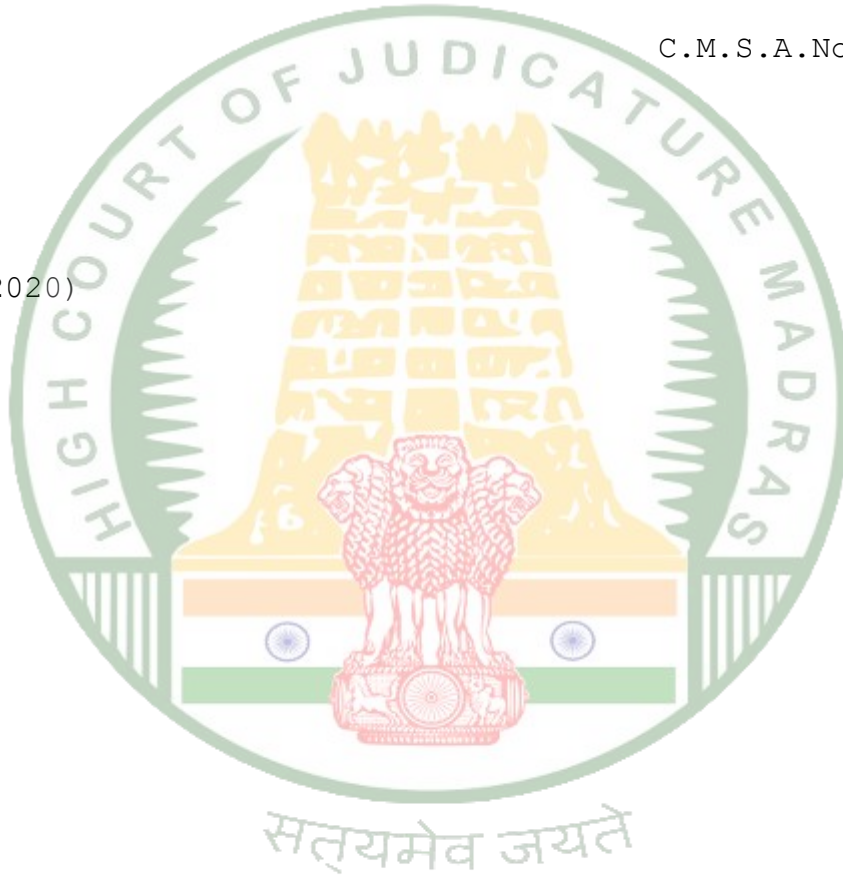
2. The Sub-Ordinate Court,
Gudiyatham.

+1 CC to Mr.D.Rajagopal, Advocate sr 16098

+1 CC to Mr.B. Deepika, Advocate sr 16953.

C.M.S.A.No.22 of 2018

SP(21/08/2020)



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